



Federal Communications Commission  
Washington, D.C. 20554

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NVJ 565

Walter E. Raabe  
Arizona Wireless and Radio Co.  
5550 Country Club Drive  
Flagstaff, AZ 86004-8740

Dear Mr. Raabe:

This is in response to your petition for rule making requesting the substitution of Channel 229C2 for Channel 236C at Winslow, Arizona, and the concomitant reallocation of Channel 236C to Doney Park, Arizona, as that locality's first local transmission service.

In support of the proposal, you state that Doney Park, located near Flagstaff, is a rapidly growing area in need of its own local transmission service. Further, you remark that a Class C station at Doney Park could provide service to approximately 300,000 persons in Coconino, Navajo and Yavapai Counties. Conversely, you report that Winslow (population 10,000) is a remotely located community, that has experienced only a small population growth over the last ten years. In justification of the requested substitution of Channel 229C2 for Channel 236C at Winslow, you remark that the weakening economic base in that community is not conducive to supporting a Class C station, whereas a Class C2 facility, being less costly to construct and operate, would likely survive in Winslow's depressed economic environment. While acknowledging the existence of a pending application for Channel 236C at Winslow (File No. BPH-941220MC), you urge that under the enumerated circumstances, and since an authorization has not been issued to the applicant, a construction permit could be issued on Channel 229C2 to satisfy the applicant's desire to provide service to that community.

Initially, we note that, as you are aware, at the time your rulemaking request was filed, an application for Channel 236C at Winslow was pending (File No. BPH-941220MC), and is therefore protected from conflicting rulemaking petitions to amend the FM Table of Allotments. See Conflicts Between Applications and Petitions to Amend the FM Table of Allotments, 7 FCC Rcd 4917 (1992), recon. granted in part, 8 FCC Rcd 4743 (1993).

Moreover, a construction permit was issued to Desert West Air Ranchers Corporation ("Desert West") on November 30, 1995, to operate on Channel 236C at Winslow at coordinates 35-00-20 and 111-11-53. Therefore, in order to accommodate the request to allot Channel 236C to Doney Park, only an equivalent channel substitution could be considered at Winslow, at the site specified in Desert West's construction permit. Your proposal does not meet the minimum distance separation requirements of Section 73.207(b) at Desert West's specified transmitter site.

As indicated above, as an authorization has been issued to Desert West Air Ranchers at Winslow, only that incumbent may request a downgrade in this instance, and/or the reallocation of its channel to specify a new community of license. See Modification of FM and TV Authorizations to Specify a New Community of License ("Community of License"), 4 FCC Rcd 4870 (1989), recon. granted in part, 5 FCC Rcd 7094 (1990). There is no provision in Section 1.420(i) of the Commission's Rules or Community of License for a third party to propose the allotment changes contemplated in your rulemaking request.

As to the bleak fiscal picture portrayed at Winslow to justify the allotment of a Class C2 Channel in lieu of Channel 236C, economic feasibility issues are not presently considered by the Commission in the allotment or licensing context. See FM Channel Assignments; Policies Regarding Detrimental Effects of Proposed New Broadcast Stations on Existing Stations, 3 FCC Rcd 638 (1988), recon. denied, 4 FCC Rcd 2276 (1989); Cheyenne, Wyoming, 8 FCC Rcd 4473 (1993); and Albion, Nebraska, 10 FCC Rcd 3183 (1995), rev. denied, 10 FCC Rcd 11927 (1995).

Additionally, you should be aware that we could not locate reference coordinates for Doney Park in the National Atlas Index. Therefore, in the absence of official boundaries for Doney Park, there is no assurance that the requirements of Section 73.315 of the Commission's Rules regarding coverage of the proposed service area could be met.

Moreover, the Commission allots channels to communities, which it has defined as geographically identifiable population groupings. Generally, if a community is incorporated or is listed in the U.S. Census, that is sufficient to demonstrate its status. In this instance, it was discovered that Doney Park is not listed in the U.S. Census as a census designated place "CDP". In the absence of such factors, a petitioner must present the Commission with sufficient information to demonstrate that such a place has social, economic and cultural indicia to qualify it as a community for allotment purposes. See e.g., Gretna, et al., Florida, 6 FCC Rcd 633 (1991); Oak Grove, Florida, 5 FCC Rcd 3774 (1990); Statenville, Georgia, 5 FCC Rcd 2685 (1990); and East Hemet, et al., California, 4 FCC Rcd 7895 (1989).

You should also note that although your proposal was signed, you did not include an affidavit verifying that the statements contained in the petition are accurate to the best of your knowledge. Section 1.52 of the Commission's Rules requires that the original of any document filed with the Commission by a party not represented by counsel, be signed and verified by the party and his/her address stated. In the absence of such verification, the petition may be dismissed. Section 1.401(b) of the Commission's Rules concerning rule making proceedings places petitioners on notice that their proposal must conform with the requirements of Section 1.52 regarding subscription and verification. See also Amendment of Sections 1.420 and 73.3584 of the Commission's Rules Concerning Abuses of the Commission's Processes, 5 FCC Rcd 3911, n.41 (1990).

In view of the above, your request for rule making is unacceptable for consideration.

Sincerely,

John A. Karousos  
Chief, Allocations Branch  
Policy and Rules Division  
Mass Media Bureau

NVJoyner:AB:PRD:MMB

bcc: FCC Reference Center (Room 239) via Secretary's Office (Room 222) (2  
copies) (petition filed 11/6/95)